

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0212-PST-E TCEQ ID: RN102789617 CASE NO.: 32660
RESPONDENT NAME: PAK-BADERIA ENTERPRISES, INC. DBA M & M SUPERETTE

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 2800 Memorial Blvd., Port Arthur, Jefferson County</p> <p>TYPE OF OPERATION: A convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 28, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Mr. Tom Greimel, Waste Enforcement Section, MC 219, (512) 239-5690</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838</p> <p style="margin-left: 20px;">Respondent: Mr. Imran B. Hamani, Registered Agent, Pak-Baderia Enterprises, Inc. dba M & M Superette, 1096 Alabama, Beaumont, Texas, 77705; and 7447 Harwin Drive, #213, Houston, Texas 77036</p> <p style="margin-left: 20px;">Respondent's Attorney: Ms. Jennifer Fleck, Law Firm of Ted A. Cox, P.C., 4910 Dacoma, Suite 100, Houston, Texas 77092</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: January 19, 2007</p> <p>Date of NOV/NOE Relating to this Case: February 5, 2007 (NOE)</p> <p>Background Facts: The EDRP was filed and mailed to the Respondent on May 30, 2007. The Respondent filed its answer to the EDRP on June 26, 2007. The enforcement action was referred to SOAH on August 13, 2007. The Respondent signed an Agreed Order on February 12, 2008.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST</p> <p>1. Failed to maintain all required State II records on-site and make immediately available for review upon request by a TCEQ Representative [30 TEX. ADMIN. CODE § 115.246(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2. Failed to verify proper operation of the Stage II equipment at least once every 12 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3. Failed to maintain all components of the Stage II recovery system in proper operating condition as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system [30 TEX. ADMIN. CODE § 115.242(3)(J) and (L) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$4,725</p> <p>Total Deferred: \$0</p> <p>Total Paid to General Revenue: \$4,725 The Respondent has paid \$4,725 of the administrative penalty, in full.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions</p> <p>1. The Respondent shall immediately begin maintaining all Stage II records at the Station.</p> <p>2. Within 30 days, the Respondent shall:</p> <p>a. Conduct annual testing of the Stage II equipment; and</p> <p>b. Begin maintaining the Stage II vapor recovery system in proper operating condition, including but not limited to, installing a new pressure/vacuum relief valve and replacing the nozzle on dispenser no. 4.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ
DATES

Assigned 12-Feb-2007

PCW 6-May-2007

Screening 14-Feb-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Pak - Baderia Enterprises, Inc. dba M & M Superette

Reg. Ent. Ref. No. RN102789617

Facility/Site Region 10-Beaumont

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 32660

Docket No. 2007-0212-PST-E

Media Program(s) Petroleum Storage Tank

Multi-Media

No. of Violations 3

Order Type 1660

Enf. Coordinator Deana Holland

EC's Team EnforcementTeam 7

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$4,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5% Enhancement Subtotals 2, 3, & 7 \$225

Notes Enhancement for one NOV with same or similar violations.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The respondent does not meet the good faith criteria.

	Total EB Amounts	0% Enhancement*
Approx. Cost of Compliance	\$850	
	\$1,350	

*Capped at the Total EB \$ Amount

Subtotal 6 \$0

SUM OF SUBTOTALS 1-7

Final Subtotal \$4,725

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$4,725

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$4,725

DEFERRAL

Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

This is not an expedited case.

PAYABLE PENALTY

\$4,725

Screening Date 14-Feb-2007

Docket No. 2007-0212-PST-E

PCW

Respondent Pak - Baderia Enterprises, Inc. dba M & M Superette

Policy Revision 2 (September 2002)

Case ID No. 32660

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102789617

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 14-Feb-2007

Docket No. 2007-0212-PST-E

PCW

Respondent Pak - Baderia Enterprises, Inc. dba M & M Superette

Policy Revision 2 (September 2002)

Case ID No. 32660

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102789617

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 115.246(1) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain all required Stage II records on-site and make immediately available for review upon request by a TCEQ representative. Specifically, a copy of the applicable California Air Resources Board (CARB) Executive Order was not available for inspection.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

26 Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the January 19, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent: Pak - Baderia Enterprises, Inc. dba M & M Superette

Case ID No. 32660

Reg. Ent. Reference No. RN102789617

Media: Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	19-Jan-2007	1-Oct-2007	0.7	\$3	n/a	\$3
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain required Stage II records. The Date Required is the date of the investigation and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

N/A

Approx. Cost of Compliance

\$100

TOTAL

\$3

Screening Date 14-Feb-2007

Docket No. 2007-0212-PST-E

PCW

Respondent Pak - Baderia Enterprises, Inc. dba M & M Superette

Policy Revision 2 (September 2002)

Case ID No. 32660

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102789617

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to verify proper operation of the Stage II equipment at least once every 12 months.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to significant amounts of pollutants which would exceed levels that are protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

365 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	x
	single event	

Violation Base Penalty \$2,500

One annual event is recommended for the 12 month period preceeding the January 19, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$822

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

Economic Benefit Worksheet

Respondent: Pak - Baderia Enterprises, Inc. dba M & M Superette

Case ID No. 32660

Reg. Ent. Reference No. RN102789617

Media: Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

N/A

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$750	19-Jan-2006	19-Jan-2007	1.9	\$72	\$750	\$822

Notes for AVOIDED costs

Estimated cost to verify proper operation of the Stage II equipment. The Date Required is one year prior to the date of the investigation and the Final Date is the date of the investigation.

Approx. Cost of Compliance

\$750

TOTAL

\$822

Screening Date 14-Feb-2007

Docket No. 2007-0212-PST-E

PCW

Respondent Pak - Baderia Enterprises, Inc. dba M & M Superette

Policy Revision 2 (September 2002)

Case ID No. 32660

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102789617

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 115.242(3)(J) and 115.242(3)(L) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain all components of the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system. Specifically, the pressure/vacuum relief valve was broken and the top half of the valve was lying on the ground. Also, the nozzle on dispenser no. 4 was broken.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

26 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the January 19, 2007 investigation date to the February 14, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$24

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent Pak - Baderia Enterprises, Inc. dba M & M Superette

Case ID No. 32660

Reg. Ent. Reference No. RN102789617

Media Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment	\$500	19-Jan-2007	1-Oct-2007	0.7	\$1	\$23	\$24
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install a new P/V relief valve and replace the nozzle on dispenser no. 4. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

N/A

Approx. Cost of Compliance

\$500

TOTAL

\$24

Compliance History

Customer/Respondent/Owner-Operator:	CN601417314 Pak - Baderia Enterprises, Inc.	Classification: AVERAGE	Rating: 3.00
Regulated Entity:	RN102789617 M & M SUPERETTE	Classification: AVERAGE	Site Rating: 3.00
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	39974
ID Number(s):			
Location:	2800 MEMORIAL BLVD, PORT ARTHUR, TX, 77640	Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	February 13, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 13, 2002 to February 13, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Deana Holland	Phone:	239-2504

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | | |
|---|------------|----------|--|
| 1 | 04/22/2005 | (374238) | |
| 2 | 02/05/2007 | (537946) | |
| 3 | 06/14/2005 | (380666) | |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|-----------------|----------|
| Date: | 04/22/2005 | (374238) | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(5) | | |
| Description: | Failure to have a record of the results of Stage II Vapor Recovery system testing conducted at the facility available for review. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.242(3)[G] | | |
| Description: | Failure to operate Stage II system in accordance with applicable CARB and/or manufacturer's requirements. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.245(2) | | |
| Description: | Failure to conduct annual/triennial test on the Stage II vapor recovery system. | | |
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
PAK - BADERIA ENTERPRISES,
INC. DBA M & M SUPERETTE,
RN102789617**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0212-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Pak – Baderia Enterprises, Inc. dba M & M Superette ("Pak – Baderia") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Pak – Baderia, represented by Jennifer Fleck of the law firm of Ted A. Cox, P.C., appear before the Commission and together stipulate that:

1. Pak – Baderia owns and operates a convenience store with retail sales of gasoline located at 2800 Memorial Boulevard, Port Arthur, Jefferson County, Texas (the "Station").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Commission and Pak – Baderia agree that the Commission has jurisdiction to enter this Agreed Order, and that Pak – Baderia is subject to the Commission's jurisdiction.
4. Pak – Baderia received notice of the violations alleged in Section II ("Allegations") on or about February 10, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Pak – Baderia of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of four thousand seven hundred twenty-five dollars (\$4,725.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Pak – Baderia has paid four thousand seven hundred twenty-five dollars (\$4,725.00) of the administrative penalty.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Pak – Baderia have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings if the Executive Director determines that Pak – Baderia has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Pak – Baderia is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 115.246(1) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain all required Stage II records on-site and make immediately available for review upon request by a TCEQ Representative. Specifically, a copy of the California Air Resources Board (CARB) Executive Order was not available for inspection as documented at the January 19, 2007 investigation.
2. 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to verify proper operation of the Stage II equipment at least once every 12 months as documented at the January 19, 2007 investigation.
3. 30 TEX. ADMIN CODE § 115.242(3)(J) and (L) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain all components of the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system.

Specifically, the pressure/vacuum relief valve was broken and the top half of the valve was lying on the ground. Also, the nozzle on dispenser no. 4 was broken as documented at the January 19, 2007 investigation.

III. DENIALS

Pak – Baderia generally denies each allegation in Section II (“Allegations”).

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Pak – Baderia pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Pak – Baderia’s compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: Pak - Baderia Enterprises, Inc. dba M & M Superette, Docket No. 2007-0212-PST-E” to:

Financial Administration Division, Revenues Section
Attention: Cashier’s Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Pak – Baderia shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Pak - Baderia shall begin maintaining all Stage II records at the Station in accordance with 30 TEX. ADMIN. CODE § 115.246.
 - b. Within 30 days after the effective date of this Agreed Order, Pak – Baderia shall:
 - i. Conduct annual testing of the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.245; and
 - ii. Begin maintaining the Stage II vapor recovery system in proper operating condition, including but not limited to, installing a new P/V relief valve and replacing the nozzle on dispenser no. 4, in accordance with 30 TEX. ADMIN. CODE § 115.242.

- c. Within 45 days after the effective date of this Agreed Order, Pak – Baderia shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Order Provision Nos. 2.a., 2.b.i., and 2.bii.

The certification shall be notarized by a State of Texas Notary Public and include the following language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Pak – Baderia shall submit all correspondence, reports, and documentation required by these Ordering Provisions to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Derek Eades, Waste Section Manager,
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1830

3. The provisions of this Agreed Order shall apply to and be binding upon Pak – Baderia. Pak – Baderia is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If Pak – Baderia fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Pak – Baderia’s failure to comply is not a violation of this Agreed Order. Pak – Baderia shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Pak – Baderia shall notify the Executive

Director within seven days after Pak – Baderia becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Pak – Baderia shall be made in writing to the Executive Director. Extensions are not effective until Pak – Baderia receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Pak – Baderia in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Pak – Baderia, or three days after the date on which the Commission mails notice of the Order to Pak – Baderia, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Pak - Baderia Enterprises, Inc. dba M & M Superette
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



4/29/2008

For the Executive Director

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

2-12-08
Date

Findor Hamann
Name (Printed or typed)

GM
Title

Authorized representative of
Pak - Baderia Enterprises, Inc.
dba M & M Superette